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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in South Africa

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the preliminary report on the situation of human rights in South Africa prepared by the Ad Hoc Working Group of Experts on southern Africa of the Commission on Human Rights in accordance with Commission resolutions 1993/9 of 26 February 1993 and 1994/10 of 18 February 1994 and Economic and Social Council decision 1993/257 of 28 July 1993.

ANNEX

Preliminary report on the situation of human rights in South Africa prepared by the Ad Hoc Working Group of Experts on southern Africa of the Commission on Human Rights in accordance with Commission resolutions 1993/9 of 26 February 1993 and 1994/10 of 18 February 1994 and Economic and Social Council decision 1993/257 of 28 July 1993

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I. INTRODUCTION

1. The Commission on Human Rights, at its forty-ninth session, adopted resolution 1993/9 of 26 February 1993, in which it decided to renew for a further period of two years the mandate of the Ad Hoc Working Group of Experts on southern Africa, established pursuant to Commission on Human Rights resolution 2 (XXIII) of 6 March 1967. In resolution 1994/10 of 18 February 1994, the Commission requested the Working Group, inter alia, to continue to examine the situation regarding the violations of human rights in South Africa and to submit a final report to the Commission at its fifty-first session and a preliminary report to the General Assembly at its forty-ninth session.

2. The Working Group is currently composed of the following six members, serving in their personal capacity and appointed by the Commission on Human Rights: Mr. Mikuin Leliel Balanda (Zaire), Chairman/Rapporteur; Mr. Felix Ermacora (Austria), Vice-Chairman; Mr. Armando Entralgo (Cuba); Mr. Elly-Elikunda Mtango (United Republic of Tanzania); Mr. Zoran Pajic (Bosnia and Herzegovina); and Mr. Mulka Govinda Reddy (India).

3. Following informal contacts between the representatives of the Permanent Mission of South Africa and the Chairman on behalf of the Working Group to visit South Africa, an invitation was received from that Government on 11 February 1994 and was circulated to the participants in the fiftieth session of the Commission on Human Rights (E/CN.4/1994/118). The Commission, in resolution 1994/10, welcomed the invitation of the Government of South Africa to the Ad Hoc Working Group of Experts on southern Africa. The Working Group expresses its satisfaction with the long-awaited invitation.

4. In pursuance of the invitation, the Working Group conducted a mission to South Africa during the period 10-26 August 1994. In the course of the mission, visits were made to Pretoria, Johannesburg, Soweto, Durban, Pietermaritzburg, Kwamashu, Inanda, Phoenix and Cape Town.

5. The Group conducted hearings in Johannesburg from 10 to 16 August 1994, in Durban from 17 to 21 August 1994 and in Cape Town from 22 to 26 August 1994, for the purposes of receiving evidence and hearing testimony from individuals and organizations having first-hand experience with the situation in South Africa in respect of human rights.

6. The Working Group took note of the changes which have occurred in the country after elections based on universal suffrage which took place in April 1994.

7. The topics on which the Group received evidence and heard testimony were the following: right to life; detention, including conditions of detention; deaths in detention and in police custody; capital punishment and executions; treatment of children and adolescents; right to education; right to health; right to work; situation of black workers; trade union activities. The Working Group was particularly interested in issues connected with the security forces, treatment of suspects in police custody and those in prison, political

prisoners, new approaches to educational institutions and health facilities, and the situation regarding the ownership of land and the rights of those who were forcibly removed from their land.

8. During the meetings held in Johannesburg, the Group heard representatives of various non-governmental organizations and, in particular, South African Prisoners Organization for Human Rights; Catholic Institute of Education; Human Rights Committee of South Africa; South African Council of Churches; Panel of Religious Leaders for Electoral Justice; Black Lawyers Association; Lawyers for Human Rights; National Land Committee; Centre for the Study of Violence and Reconciliation; Southern African Catholic Bishops Conference; Independent Board of Inquiry into Informal Repression; Education Policy Unit; National Education Coordinating Committee, National Housing Forum; South African National Congress Organization and a representative of Archbishop Desmond Tutu. The Working Group was also invited to a workshop on "Constitutional litigation - breaking with the past", addressed by the Minister of Justice and organized by the Black Lawyers Association of South Africa.

9. While in Johannesburg, visits to Zonderwater prison and Adriaan Vlok police station were organized by the South African authorities.

10. In Durban, representatives of the Institute for Multi-Party Democracy and Violence Monitor Natal testified before the Working Group. Members of the Faculty of the University of Durban-Westville also made representations to the Group. The Working Group also received testimony from the representatives of the Police and Prison Officers Civil Rights Union (POPCRU), in Pietermaritzburg.

11. Visits to police stations organized by the South African authorities, including those to Durban North Police Station and Inanda (Kwazulu/Natal), were of particular interest to the Working Group and allowed it to have consultations with high-level officials, including those on duty at the provincial level.

12. In Cape Town, the Working Group had consultations with the Deputy Foreign Minister, the Minister of Justice, the Minister of Defence, the Minister of Safety and Security, the Minister of Correctional Services and the Deputy Minister of Education. In addition, consultations with high officials of the Ministry of Health were organized to exchange views and receive information regarding government policies. The Working Group also held meetings with several Judges of the Supreme Court and followed part of the proceedings in a murder trial. A visit was also organized to the University of Cape Town, where the Group had a meeting with the Dean of the Faculty of Law.

13. Visits to prisons organized by the South African authorities included Pollsmoor and Victor Vester.

14. The Working Group received information in the field of labour laws at Geneva from a representative of the Permanent Mission of South Africa, on behalf of the Government of South Africa, on 5 October 1994.

15. Apart from the official meetings, the Working Group heard a total of 43 witnesses.

16. The present report, which should be read in conjunction with the Working Group's latest report to the Commission on Human Rights (E/CN.4/1994/15), is a very brief evaluation of the principal developments in the field of human rights between February 1994 and September 1994, and especially since the April 1994 elections. It was adopted by the Working Group on 5 October 1994.

II. SITUATION OF HUMAN RIGHTS IN GENERAL

17. Since the non-racial multi-party democratic elections took place in April 1994, significant political changes have taken place in South Africa. The changes have created a situation which leads the people to look forward with great expectations to the future. However, it would appear that so far as the right to life is concerned, lack of respect for life, in the form of violent killings, continues and the crime rate has risen. On the other hand, according to information received, politically motivated killings seem to have almost ceased. However, deaths in police custody and detention appear to continue. Recent reports by the Goldstone Commission appear to have gone some way in identifying the culprits connected with politically motivated killings and thus give a basis for investigations leading to eventual prosecutions.

18. The question of the abolition of the death penalty remains unresolved. However, it would appear that there is a majority view in favour of its abolition, although some still favour it. According to the latest figures received, there are 507 persons on death row in South Africa.

III. THE FIRST FREE ELECTIONS

19. In January 1994, the Pan Africanist Congress announced its decision to suspend armed struggle and to participate in elections. In February 1994, further amendments to the Interim Constitution were adopted which included a two-ballot system permitting the possibility of voting for candidates at the provincial and national levels.

20. In the so-called "homeland" of Bophutatswana, in March 1994, a wave of unrest and strikes arising out of restrictions to free political activity and fears of civil servants that their pension rights and salaries would not be protected by the administration led to violent clashes. Intervention by the Afrikanerweerstandsbeweging (AWB) with the intention of upholding the administration of Bophutatswana worsened the situation, leading to further violence and deaths. As a result of the continued strikes and protests and the African National Congress call to the Transitional Executive Council to intervene, the South African Cabinet ordered South African Defence Force (SADF) troops into Bophutatswana. The Transitional Executive Council decided to install an interim administration after the collapse of the "homeland" administration, and on 14 March 1994 two administrators were appointed.

21. In the so-called "homeland" of Ciskei, civil servants demonstrated and protested to register their dissatisfaction regarding the payment of their pensions. Unrest and violence resulting in deaths caused further deterioration in the situation and finally, on 22 March 1994, the Ciskei military leader,

Brigadier Oupa Gquozo, resigned. SADF troops were immediately deployed in Ciskei, and this was followed by the appointment of two joint administrators.

22. In view of the fact that Trankei and Venda had previously expressed their desire to participate in the elections and be reintegrated into the Republic of South Africa, the developments in Bophutatswana and Ciskei cleared the way to proceed with elections. At this juncture, the main obstacle was in respect of the non-participation of certain right-wing political parties, the Inkatha Freedom Party and the Conservative Party. After protracted negotiations and many concessions given by the previous government and Mr. Nelson Mandela to the Inkatha Freedom Party a week before the scheduled elections, they announced their intention to participate in the elections. After the necessary amendments to the Interim Constitution and the ballot papers, the stage was set for the elections to proceed. The foresight, generosity and statesmanship of Mr. Mandela were a crucial element in the realization of this long-awaited event.

23. During the last week of April 1994, the first non-racial multi-party elections based on universal suffrage took place in South Africa. Apart from isolated incidents of violence, the vast majority of the people of South Africa participated in the elections in the most orderly and patient manner. The elections were considered to be free and fair.

24. Twenty-three political parties contested the elections and four abstained (see appendix).

25. Voter education was a key component in the organization of South Africa's first election by universal suffrage. The United Nations Observer Mission in South Africa (UNOMSA) was required to verify that the voter education efforts of the electoral authorities and other interested parties were sufficient and would result in voters being adequately informed about both the meaning of the vote and its procedural aspects.

26. Of the numerous parties contesting the elections, only seven won seats in the 400-member National Assembly, distributed as follows in terms of the percentage poll each party received:

African National Congress	252
National Party	82
Inkatha Freedom Party	43
Freedom Front	9
Democratic Party	7
Pan Africanist Congress	5
African Christian Democratic Party	2

Conduct of polling

27. On 26 April, the day reserved for special voting, observers visited and reported upon a total of 2,960 special voting points. Also on 26 April, United Nations observers monitored voting at 119 foreign voting stations in 57 countries.

28. On 27 and 28 April, observers in South Africa visited 7,340 of the 8,478 voting stations.

29. On the evening of 28 April, polling was extended to 29 April in Transkei, Ciskei, Venda, Lebowa, Gazankulu and Kwazulu. A total of 180 observer teams were deployed to observe the extended polling in these areas.

30. After the end of voting, on 30 April, the Secretary-General's Special Representative in South Africa and the heads of the observer missions of the Commonwealth, the European Union and the Organization of African Unity (OAU) issued the following statement:

> With the end of voting in these historic national and provincial elections in South Africa, in which all South Africans could vote for the first time, we the heads of Mission of the United Nations, Organization of African Unity, Commonwealth, and European Union election observer groups have jointly agreed on an interim assessment of the process up until the end of voting and before counting is completed. Our assessment is based on the work of more than 2,500 election observers deployed throughout the country, under the coordination of the United Nations.
>
> The people of South Africa clearly demonstrated their commitment to the end of apartheid and the transformation to non-racial democracy by turning out in enormous numbers to vote.

IV. ADMINISTRATION OF JUSTICE

31. During discussions with the Minister of Justice, the Working Group was informed of policies and approaches that were to be adopted so far as legal institutions were concerned. The Minister stressed the fact that the present Government was a result of a negotiated settlement in the spirit of reconciliation and that there was neither a revolutionary victory nor a revolutionary defeat. The Constitution of the country dealt extensively with all aspects of human rights and the mechanisms set up under the Constitution and the fact that all parties were committed to the Constitution precluded the creation of arbitrary standards. The Minister referred to the Bill of Rights, the Judiciary, the Commission on Human Rights, the Commission on Gender Equality, the Public Protector, and the Commission on Restitution of Land Rights, as well as other procedures. He also stated that his Government would count on a strong civil society.

32. Referring to the question of amnesty, he informed the Working Group that the previous government had passed two laws, one in 1990 and another in 1992, to cover what were regarded as political offences committed up to 8 October 1990.

Many people had been identified under those procedures. In order to deal with those who had not yet been released, an advisory committee was currently dealing with the cases of approximately 1,000 people, who were not all prisoners, to finalize the matter. The Constitution made provision for amnesty in cases arising out of past conflicts and further promulgation of legislation would be required.

33. The Minister stated that the definition of a political prisoner would be influenced by the Norgaard principles and amnesty would be accorded, in conjunction with the Constitution, to those eligible. However, as a result of country-wide discussion on the whole question, it was now clear that a Truth and Reconciliation Bill would be passed by the end of the year to deal with the matter. The cut-off date for amnesty for political offences was 5 December 1993. The Minister further stated that when the Commission was set up, it would have an even-handed approach and it was envisaged that there would be full disclosure. At that juncture, it was not clear whether disclosure to the Truth and Reconciliation Commission would be in camera or whether it would be made public. The accent was on the victims and their families and some form of reparation to them. The nature of the proceedings would not be judicial, thus leaving the question of prosecutions open, subject to amnesty. The Working Group considered that that process was of great significance in evolving the eventual mechanism and procedures to deal with the victims. Preliminary discussions had taken place with the non-governmental organization sector and also at the international level, with countries which had had to face those problems and created such mechanisms in the recent past.

34. Referring to the needs of the judiciary to correct the non-representative nature of the judicial structures, the Minister of Justice stated that there was need to "de-mystify" the law, and to move cautiously when dealing with those issues as well as the question of training. He expressed, inter alia, concern over the current juvenile justice system as well as the fact that there were too many prisoners awaiting trial.

35. The Working Group noted that the establishment of a Judicial Service Commission went a long way towards creating and maintaining an Independent Judiciary. However, according to information received, appointments in various institutions like the Constitutional Court needed a careful approach in order to avoid perpetuation of the situation under the apartheid system, given the long-standing boycott by the Black, Coloured and Indian lawyers which had resulted in a refusal to accept appointments under the previous government. In that connection, involving the deprived sections of the non-white legal community of South Africa was of great importance. Accelerated training and affirmative action in that particular realm were of crucial importance.

V. SECURITY

36. In view of the historical background in South Africa, as far as the conduct of the South Africa Police and South African Defence Force was concerned, the Working Group was of the opinion that its meeting with the Minister of Safety and Security was of great importance. Referring to an apparent rise in the crime rate, the Minister stated that discussions had already taken place between

the responsible provincial ministers and commissioners of police. It appeared that there were mainly four provinces where violent crimes (including killings of police personnel) took place. The four regions in question were Pretoria and Witwatersrand, Kwazulu/Natal, Western Cape and Eastern Cape. It was further discovered that 80 per cent of the police stations were located outside the problem areas and that those which were located in the flashpoint areas were ill-equipped. Police officers, who investigated up to 60 or 70 cases of serious crimes, were dependent on public transport. A programme had been drawn up aimed at dealing with the lack of resources and other problems facing the ordinary police personnel. In some cases, as a result of an improvement in the relationship between the community and police, persons accused of violent crimes had been apprehended. In conjunction with other relevant ministries, a crime prevention programme was in the process of being developed; it was envisaged that it would also deal with illegal immigrants and organized crime syndicates. The Minister of Safety and Security then referred to the proposed South African Police Services Bill which was being discussed and which it was hoped would become law in the very near future. The Bill had been drafted after a technical committee had been appointed and elaborate consultations had taken place. The participation of the community in police, non-governmental organizations and human rights organizations and others concerned in those consultative forums had been instrumental in the evolution of the Bill. The Minister stressed the necessity of promoting good relations between the police and the community and ensuring community participation in efforts aimed at upholding safety and security.

VI. CONDITION OF PRISONERS

37. The Working Group was given the opportunity to visit three prisons as well as three detention cells in police stations in different parts of the country. In two of the prisons, the Group was able to interview prisoners of their choice, in private. It was observed that conditions in prisons varied considerably. During those visits, it became clear that there was a need to ameliorate prison conditions and detention cells at police stations. Conditions at Vonderwater prison were found by the Working Group to be satisfactory. However, after a visit to Pollsmoor and Victor Vester prisons, the Working Group would like to recommend better access to medical care, provision for a better diet and facilities for physical activities. The Working Group noted that the prison authorities were faced, inter alia, with difficulties arising out of severe overcrowding and budgetary problems.

38. In the course of the discussions with prison authorities as well as with the inmates, it became clear that there was inadequate understanding of the rights and/or privileges of the prisoners vis-à-vis the officials who were in positions of authority, especially in respect of medical care.

39. The Minister of Correctional Services, as well as the prison officials, had stressed some of the difficulties in maintaining discipline in the existing circumstances, faced as they were with overcrowding and understaffing.

40. In this connection, the two incidents which had given rise to violent confrontations (one on 18 March 1994, when the prisoners were demanding the

right to vote, and another on 13 June 1994, when they were demanding clarification in respect of amnesty), had led to the appointment of a Commission of Inquiry to look into prison unrest. The Working Group considered that given the difficulties which arose over the right of prisoners to vote and the lack of a proper understanding of the eligibility for amnesty to prisoners qualifying as political prisoners, there was great need for an in-depth and wide-ranging inquiry which would take into account not only the above-mentioned problems but also the whole question of opportunities and access to education and betterment of prisoners with the possibilities of rehabilitation into society after completion of their prison sentences. The Working Group noted that President Mandela had granted a six-month remission to all prisoners. As a result, 12,000 prisoners had been set free. Furthermore, since the democratically elected Government had come into power, all mothers with minor children (under 12) who had committed non-violent crimes had been released. Those children who had not committed violent crimes and had a place to go to, that is, either to their parents or guardians or places of safety, had also been released. The destructive effect on the family among the non-white population of South Africa under the apartheid system was of particular significance for children who were imprisoned, when looked at in the context of the foregoing.

41. The Working Group noted that there was a widespread mistrust of officers who had served under the oppressive apartheid system. The Group believed that it might be useful to introduce new blood among prison officials at all levels as that would contribute to overcoming distrust and create a better atmosphere. In that regard, the Working Group considered that great care and attention should given to training and recruitment in the future.

42. It may be mentioned here that the Working Group was informed by human rights organizations that according to representations made to them by prisoners, their situation was desperate. Although officially no apartheid existed, when medical care was required white prisoners were allegedly sent to hospitals which were formerly white and black prisoners to those which were formerly black. Furthermore, although there was an amendment to the statutes dealing with prisoners that abolished punitive disciplinary actions, allegations of decrease in the portions of food allocated, solitary confinement, physical assaults on prisoners and delay in access to medical treatment were made against the officers of correctional services. It was further pointed out that lack of proper heating over a period of time could result in diseases like rheumatism, and a generally substandard diet lacking in adequate nutrition could result in deterioration of health. The Working Group was also informed that the fact that the senior personnel were essentially the same as before meant that the implementation of new approaches in administrating the daily life of prisoners would be difficult, as it was alleged that the attitude of the prison officers had not changed. A plea was repeatedly made for prison personnel to be more representative of the South African population.

VII. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Economic and social rights

43. The Working Group noted with interest the brief outline given by the Deputy Foreign Minister, who had stated that human rights and democracy and improvement in the socio-economic conditions were the two important cornerstones of the policy perspectives of his Government and that the proposed Reconstruction and Development Programme would go a long way in the attempts to correct the socio-economic legacies of the past. He informed the Working Group that South Africa had joined the Organization of African Unity, the Commonwealth and the Non-aligned Movement and had resumed its participation in the activities of the United Nations. Proposals to join the Southern African Development Committee were under consideration. He also referred to the possible creation of a Southern Africa Human Rights Commission. The Minister stated that his country was greatly indebted to the international community, without whose involvement in South Africa the process towards democratization would probably have been much more costly and painful. His Government was also particularly conscious of the important role the various international organizations and the continent of Africa played in that respect. It was clear that his country would continue to be subject to the same scrutiny as all other countries concerning human rights violations.

44. Senior officials of the Ministry of Health discussed the whole question of health care in the country with the Working Group. It was pointed out that there were two definite systems in South Africa: the private system, where medical schemes were based on insurance contributions by employers and their employees, to which the higher income groups in the formal sector belonged, and the public sector system. Twenty-three per cent of the population of South Africa belonged to one of the insurance schemes which was in the private sector. The remaining 77 per cent of the population had no insurance and were considered the responsibility of the public sector. The great disparity in funding the two sectors could be seen from the fact that 23 per cent of the population from the private sector consumed 46 per cent of the total health care and 77 per cent of the population in the public sector consumed 54 per cent of the total health care expenditure. Patients paid according to the income they earned, on a sliding scale, and those who were unemployed received free treatment in the hospitals.

45. The Working Group was informed that President Mandela had announced that, as of 1 June 1994, children under 6 years of age and pregnant mothers would be entitled to free medical care. In addition, it had been announced that under a feeding scheme for primary schools, children would receive free meals. Under that scheme, 130,000 schoolchildren were currently receiving free meals on a daily basis. It was envisaged that, from 1 September 1994, the numbers would be increased to 1.9 million and eventually include 3.8 million children, who would receive meals five days a week during the school term, at a total cost of over 1 billion rand. The total primary school population in South Africa was estimated to be 8 million. Therefore, the scheme was to be extended only to areas where the greatest need existed.

46. The Working Group was informed of the need to provide access to hospitals, especially for the underprivileged people of the country. However, it was envisaged that in the course of the next four years 870 clinics would be built first, as in the existing situation primary health care was needed more urgently. The clinics were to be built in the rural areas and in the informal settlement areas. The Working Group was further informed that in the Reconstruction and Development Programme, a great deal of attention had been given to the health care sector. Primary health care, maternal and child health care, family planning and immunization programmes had received special attention. The Working Group was also informed that the focus, to begin with, would be on primary health care, and that initially prevention and health promotion would take precedence over curative health care.

47. The Working Group was informed that since the elections, apartheid was no longer practised in hospitals. However, the geographical location of hospitals might result in a situation where hospitals in an affluent area would be used, for example, by white patients only, as they would be located too far away for the non-white population. Referring to the medical staff, it was further stated that selection procedures had been changed to ensure the training of more non-white doctors, especially from the rural areas. The recent intake of non-white medical students at the University of Cape Town was 66 per cent. The medium of instruction being Afrikaans in three of the medical schools in South Africa, bridging courses were offered to those students who required assistance. All universities now admitted students without taking their race into consideration.

48. The Working Group was informed of the possible introduction of compulsory community service for all who qualified as doctors for a period of two years to serve in rural and squatter areas. It was pointed out that 50 per cent of students who had qualified from the University of Witwatersrand had left the country after three years.

B. Trade union rights and the situation of workers

49. According to information received from a representative of the Permanent Mission of South Africa in Geneva, the situation of the black workers under the previous Government had been administered under 10 homeland departments and one white central Pretoria-based Department of Labour. The 11 departments were responsible for ensuring that labour markets did not function according to normal market criteria but according to racially imposed criteria. This situation remains unchanged. However, the new Government in South Africa is in the process of preparing comprehensive legislation in conformity with the International Labour Organization (ILO) standards to remedy the situation. It will become operative towards the end of this year.

50. It is envisaged that the four statutes in force (the Labour Relation Act, 1956, the Agricultural Labour Act, 1993, the Education Labour Relations Act, 1993 and the Public Sector Labour Relations Act, 1993) will be replaced by a Labour Relations Act, which will reform the previous legislation to include the rights of domestic workers and farm workers.

51. As reported previously by the Working Group, the legal situation of farm workers after the abolition of the Master and Servant law had not changed. Farm workers continued to rely on the farmers, who were their employers, for provision of living and other facilities, as well as education for their children. In view of that dependence, the Working Group was particularly concerned about the laws relating to farm workers in respect of the freedom of association, the right to education, the right to strike and the right to pensions.

52. The Working Group noted that a change in migrant labour policy was envisaged and that land reforms based on a free market policy were also under discussion. Furthermore, the proposed appointment of a Mediation and Arbitration Commission would assist considerably, inter alia, in the elimination of industrial action in the form of a strike as the only action available when a labour dispute arose.

C. Cultural rights

53. In discussions with the Working Group, the Deputy Minister of Education referred to the past inequalities under the apartheid system and stated that under the Constitution every citizen had a right to education. The State therefore had the responsibility to provide education for all citizens, without any discrimination based on race, religion or gender. In the past, only white children had the privilege of compulsory school attendance, and other communities were excluded. The reorganization of the former educational system into a unified system was scheduled to commence with two pieces of legislation. The Education and Employment Acts were due to be tabled before the end of the current session of Parliament. The Working Group was informed that a white paper would soon be available, and by the end of the year it would be tabled in Parliament; it was envisaged that the white paper would set out policy formulated after considering priorities and would create the legal framework and develop a structure for the areas in greatest need. Particular attention was being given to the eradication of institutional structures and schemes which fostered the preservation of apartheid in education. It was envisaged that a policy for the restoration of a culture of teaching and learning would be commemorated and Soweto Day was set aside for that purpose.

54. Under the requirements of the Constitution, only the national government could establish universities and technical institutes, which were State-subsidized. However, the provincial administration was entitled to lay down general policy with regard to curricula and remuneration of teachers. The minimum age for school attendance had not yet been established. The Working Group was informed that 23 per cent of the national budget was being spent on education and that in time to come, it was hoped to build a reservoir of teachers, equal access to educational facilities and community commitment to compulsory education. A review of the university system was planned in order to achieve orderly access through equitable planning.

55. The Working Group was informed that dramatic changes were needed in planning for equality of access in education to meet the constitutional obligation by 1995.

VIII. THE INTERIM CONSTITUTION IN REGARD TO HUMAN RIGHTS

56. The Working Group took note of the following:

As pointed out on several occasions by the Ministers of the Government of National Unity of South Africa, the Constitution of South Africa is a result of a negotiated settlement and therefore represents, in a large measure, the acceptance of compromises by all parties concerned.

57. The Constitution of the Republic of South Africa, which is currently in force, is an Interim Constitution. Under its provisions (S73 (1)), the Constitutional Assembly is enjoined to adopt amendments, if any, within two years from the date of the first sitting of the National Assembly. Provision is made for procedures to be adopted in the absence of the requisite two-thirds majority needed for its adoption.

58. The Constitution expressly abrogates former laws on which the system of apartheid was based and wide-ranging provisions for the protection of human rights and implementing procedures to guarantee them have been made.

59. Fundamental rights, as enumerated under chapter 3, are binding at all levels of government, that is, including the provincial level of government.

60. The Working Group noted with satisfaction that the right to life was guaranteed. However, questions such as the death penalty, abortion and those mentioned under article 5 of the International Covenant on Civil and Political Rights regarding pardons and executions were not dealt with.

61. The right to equal protection and equality before law is far-reaching and is in line with the provisions under the Convention on the Elimination of All Forms of Racial Discrimination.

62. Furthermore, provision is made for freedom and security of the person, which includes the right not to be detained without trial. Torture of any kind, as well as cruel, inhuman or degrading treatment or punishment, is forbidden (S.11).

63. The Constitution forbids servitude and forced labour, and privacy is guaranteed. It includes the right not to be subjected to an arbitrary search of a person, or his or her home or property. It also protects against the violation of private communications and the seizure of private communications. However, no mention is made of data protection.

64. The right to religious belief, freedom of opinion, assembly and movement as well as the right of association are guaranteed under the Constitution. The right to choose a place of residence is expressly provided for (S.S.14 to 19).

65. The right to participate in political activities is guaranteed and the right to vote by secret ballot is provided for (S.S.20, 21).

66. Provisions regarding access to Court in respect of justiciable disputes and access to information held by the State or any of its organs are made in the Constitution (S.S.22 and 23).

67. The general principles regarding administration of justice and detention and arrests of person, which correspond to the relevant international instruments, are clearly indicated (S.S.24 and 25).

68. Some economic and social rights, including the right to an environment which is not detrimental to health, are also included in chapter 3 of the Constitution (S.S.26 to 32).

69. In addition to the general provisions regarding limitations which are in conformity with the international judicial practice, the question of detention under a state of emergency is dealt with extensively (S.S.33 and 34).

70. The Working Group noted with satisfaction that specific provisions were made to uphold the human rights of the citizens of South Africa and that aggrieved parties had recourse to the following:

(a) The Constitutional Court (S.S.97, 98 and 99). The Constitution provides that the President of the Constitutional Court shall be appointed by the President to hold office for a non-renewable period of seven years. In addition, the court will consist of 10 other judges. Their appointment is regulated by detailed procedures as set out (S.99). Their term of appointment consists of a non-renewable period of 10 years.

(b) The Public Protector (S.110). A Public Protector for the Republic of South Africa shall be appointed by the President within 60 days of the first sitting of the Senate after the commencement of the Constitution.

(c) The Human Rights Commission (S.115). The President shall appoint a Human Rights Commission which shall consist of 10 members and a Chairperson within 60 days of the first sitting of the Senate under the Constitution.

(d) The Supreme Court (S.101).

(e) The Commission on Gender Equality (S.119). The Commission on Gender Equality shall consist of a Chairperson and such members as may be determined by an Act of Parliament, in order to promote gender equality and to advise and make recommendations to Parliament or any other legislation with regard to legislation which affects gender equality and the status of women. The aforementioned mechanisms are not yet in place, although nominations to some of them have already commenced.

71. The Working Group noted that the Constitution contained far-reaching provisions which took cognizance of international instruments, in order to safeguard human rights.

72. The memorandum on the objectives of the Constitution of the Republic of South Africa Bill, 1993 states that:

The Plenary of the Multi-Party Negotiating Process has agreed to the contents of the above-mentioned bill, which provides a new Constitution for the Republic of South Africa. The Constitution makes provision for inter alia the following:

(a) A common South African citizenship for all South Africans;

(b) The creation of a sovereign and democratic constitutional State;

(c) Equality between men and women and people of all races;

(d) A justiciable Bill of Fundamental Rights;

(e) A Parliament consisting of a National Assembly and a Senate;

(f) A Government of National Unity;

(g) Nine provinces, each having certain legislative and executive powers;

(h) A Constitutional Assembly to draft and adopt a final Constitution;

(i) An independent and impartial judiciary, which includes a Constitutional Court.

73. The Working Group found the memorandum to be an authentic body of principles and guidelines for the interpretation of the Interim Constitution. They should represent the "bottom line" and starting-point for any future changes in the Constitution.

74. Schedule 4 of the Interim Constitution, while dealing with Constitutional Principles, stresses, inter alia, fundamental rights, national unity, gender and racial equality, equality before law, the separation of powers, multi-party democracy, universal adult suffrage, regular elections, proportional representation and a common roll.

75. Furthermore, reference is made in the Constitution to the acknowledgment, promotion and protection of the diversity of language and culture. The institution, status and role of indigenous law are recognized, protected and applied in courts. It is subject to the fundamental rights contained in the Constitution and to legislation which deals with it specifically. This is in pursuance of the principle of democratic representation at each level of government. In the event of a dispute concerning legislative powers allocated by the Constitution concurrently to the national and the provincial governments which can be resolved by a court, precedence is given to the legislative powers of the national Government. There is, furthermore, an express provision in schedule 4 which states that there shall be an efficient, non-partisan and career-oriented public service and that members of the security forces (policy, military and intelligence) are required to perform their functions and exercise their powers in the national interest and are prohibited from furthering or prejudicing party political interests.

IX. CONCLUDING REMARKS

76. The Working Group has come to the conclusion that after the elections of April 1994, the new political atmosphere and the Interim Constitution represent a positive and viable ground for democratic development of the Republic of South Africa and for the protection of human rights in conformity with the relevant international standards.

77. Political and constitutional changes are followed by a commitment of all decision makers to the idea of compromise and national unity. The importance of compromise and a cautious approach to the shaping of the new legal order and to implementing the new social policy was expressed equally strongly by government representatives, police officers, non-governmental human rights bodies and individuals alike.

78. The Working Group believes that the process of eliminating apartheid in South Africa is irreversible and that the future generations of South Africans are finally given the opportunity to live in a society which is free from racism. However, the legacy of apartheid is still present. The infrastructures and personnel from the previous apartheid system remain intact. In order to change the behaviour of the bureaucracy, a comprehensive educational programme which would also include all segments of society and all walks of life could help substantially in this process. The Working Group wishes to point out that the legacy of apartheid still leaves South Africa's stability and peace vulnerable and that the threat of occasional eruptions of violence is a part of the everyday reality in the South African society. Under these circumstances, the new Government has a challenging task to provide for safeguards and guarantees for human rights, based on the rule of law.

79. Many government officials and representatives of non-governmental organizations expressed appreciation of the important role of the United Nations in its support for the anti-apartheid struggle in the past and valued the work of the Working Group. They expressed the hope that an appropriate form of cooperation and assistance in promoting human rights in South Africa would continue in the new circumstances.

80. The Ad Hoc Working Group of Experts on southern Africa will make recommendations to the Commission on Human Rights at its fifty-first session after prior consultations with the representatives of the Government of South Africa. It remains for the Commission to decide whether there is a need for a follow-up for studying the human rights situation until the final Constitution has been agreed upon in South Africa.

APPENDIX

Political parties that contested the election, geographical division of South Africa and composition of the new South African Government

The following political parties contested the elections:

1. African Christian Democratic Party (ACDP)
2. African Democratic Party (ADP) led by former Ciskei military rule Brigadier Oupa Gquozo
3. African Moderate Congress (AMC)
4. African Muslim Party (AMP)
5. African National Congress (ANC)
6. Democratic Party (DP)
7. Dikwankwetla Party
8. Federal party
9. Freedom Front (FF)
10. Inkatha Freedom Party (IFP)
11. Islamic Party
12. Keep it Straight and Simple Party
13. Luso - South Africa Party (LUSAP)
14. Minority Front (MF)
15. National Party (NP)
16. Northwest Democrats
17. Pan Africanist Congress (PAC)
18. Soccer Party
19. South African Communist Party (SACP)
20. South African Women's Party
21. Women's Rights for Peace Party

22. Workers List Party

23. Workers International to Rebuild the Fourth International Party

The following parties refrained from participating in the elections:

1. The Azanian People's Organization

2. The Black Consciousness Movement

3. Conservative Party (CP)

4. Afrikaner Volksfront (AV)

Only seven parties won seats in the 400-member National Assembly, distributed as follows in terms of the percentage poll each party received:

ANC	252
NP	82
IFP	43
FF	9
DP	7
PAC	5
ACDP	2

Geographical division of South Africa

South Africa is divided into nine provinces. The African National Congress won seven of the nine provinces. The National Party won the Western Cape. Inkatha Freedom Party won Kwazulu/Natal.

The provinces are:

1. Pretoria and Witwatersrand (PWV)

2. Kwazulu/Natal

3. Eastern Cape

4. Western Cape

5. Northern Cape

6. Eastern Transvaal

7. Northern Transvaal

8. North West

9. Orange Free State

THE NEW SOUTH AFRICAN GOVERNMENT

The following members of the Cabinet of South Africa were appointed on 12 July 1994:

President: Mr. Nelson Rolihlahla Mandela

First Deputy President: Thabo Mbeki

Second Deputy President: F. W. de Klerk

Minister of Agriculture: Kraai van Niekerk

Minister of Arts, Culture, Science and Technology: Ben Nguabane

Minister of Correctional Services: Sipho Mzimela

Minister of Defence: Joe Modise

Minister of Education: Sibusiso Bhengu

Minister of Environment Affairs: Dawie de Villiers

Minister of Finance: C. Liebenberg

Minister of Foreign Affairs: Alfred Nzo

Minister of Health: Nkozasana Diamini Zuma

Minister of Housing and Welfare: Joe Slovo

Minister of Justice: Dullah Omar

Minister of Labour: Tito Mboweni

Minister of Land Affairs: Derek Hanekom

Minister of Mineral and Energy Affairs: Roelof F. Botha

Minister of Post, Telecommunications and Broadcasting: Pallo Jordan

Minister of Provincial Affairs and Constitutional Development: Roelf Meyer

Minister of Public Enterprises: Stella Sigcau

Minister of Public Services and Administration: Zola Skweyiya

Minister of Public Works: Jeff Radebe

Minister of Safety and Security: Sydney Mufamadi

Minister of Sport: Steve Tshwete

Minister of Trade, Industry and Tourism: Trevor Manuel

Minister of Transport: Mac Maharaj

Minister of Water Affairs and Forestry: Kader Asmal

Minister of Welfare and Population Development: Abe Williams

Minister Without Portfolio: Jay Naidoo

Speaker of Parliament: Ms. Frene Ginwala

President of Senate: Mr. Kobie Coetsee

Chairman of Constituent Assembly: Mr. Cyril Ramaphosa

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Cuba

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Cuba prepared by Mr. Carl-Johan Groth, Special Rapporteur of the Commission on Human Rights, in accordance with paragraph 11 of Commission resolution 1994/71, of 9 March 1994, 1/ and Economic and Social Council decision 1994/261, of 22 July 1994.

Notes

1/ See Official Records of the Economic and Social Council, 1994, Supplement No. 4 (E/1994/24), chap. II, sect. A.

ANNEX

Interim report on the situation of human rights in Cuba prepared by the Special Rapporteur of the Commission on Human Rights in accordance with resolution 1994/71 of the Commission and Economic and Social Council decision 1994/261

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I. INTRODUCTION

1. At its fiftieth session, the Commission on Human Rights adopted resolution 1994/71, entitled "Situation of human rights in Cuba", on 9 March 1994. a/ In that resolution, the Commission decided to extend for another year the mandate conferred on the Special Rapporteur under resolution 1992/61 of 3 March 1992, b/ whereby Mr. Carl-Johan Groth had been appointed Special Rapporteur.

2. In resolution 1994/71, approved by the Economic and Social Council in its decision 1994/261 of 22 July 1994, the Special Rapporteur was requested to report to the Commission at its fifty-first session and to submit an interim report to the General Assembly at its forty-ninth session. The present report is in response to that request.

3. In resolution 1994/71, the Commission also requested the Special Rapporteur to maintain direct contact with the Government and citizens of Cuba. It expressed particular concern that the Cuban Government had failed to carry out its commitment, common to all Member States, to cooperate with the Commission on Human Rights, in conformity with Articles 55 and 56 of the Charter of the United Nations, and it called upon the Government to permit the Special Rapporteur the opportunity to carry out his mandate in full, in particular by allowing him to visit Cuba.

4. On 10 August 1994, pursuant to his mandate, the Special Rapporteur addressed a letter to the Permanent Representative of Cuba to the United Nations Office at Geneva requesting the collaboration of the Cuban Government in accomplishing his mandate and an opportunity to visit the country. To date, there has been no answer to this letter.

5. Also pursuant to his mandate, the Special Rapporteur tried to obtain information from a wide variety of sources, and expressed his willingness to receive any person or group wishing to meet with him. For that purpose, and bearing in mind that most of the sources of information on the situation of human rights in Cuba are in the United States of America, he travelled to New York and Washington, D.C., from 29 August to 2 September 1994, where he had the opportunity to meet with individuals and representatives of the following organizations and groups: the Cuban Committee for Human Rights, the Committee to Support the Human Rights Movement in Cuba, the Cuban Women's Foundation, Human Rights in Cuba, Cuban Change, the Democratic Confederation of Workers, Freedom House, the Cuban Worker's Trade Union, Americas Watch, Areito Review, the Cuban-American Committee for Peace, the World Federation of Cuban Political Prisoners, the Cuban Committee against the Blockade, the Puerto Rican Group against the Blockade, the American Institute for Free Labor Development, the Foundation for the Defence of Family Values, the InterFaith Foundation for Community Organizations, the House of the Americas and the American Association of Jurists. The Special Rapporteur received written material - in addition to that received from the above-mentioned sources - from such sources as the Information Bureau of the Cuban Human Rights Movement, the Foundation for Human Rights in Cuba, the Christian Democrat Movement and Amnesty International, as well as many private communications sent to the Special Rapporteur from Cuba and

abroad. The situation of human rights in Cuba reflected in this report is therefore based primarily on information from these sources.

II. CIVIL AND POLITICAL RIGHTS

A. The right to freedom of expression and association

6. As pointed out in earlier reports, the major problems with respect to civil and political rights can be attributed to discrimination on political grounds and to the lack of freedom of expression and association. The information available to the Special Rapporteur indicates that since the publication of the last report there has been no change in the practice of the authorities in this regard or in the constitutional and penal provisions on which this practice is based. c/ Persons who peacefully manifest their disagreement with government policy, either as individuals or in groups which have sprung up spontaneously to defend human rights, including trade union rights, or who engage in political activity, continue to be subject to harassment, accusations, disciplinary measures and prison sentences. Although these groups are determined to use only peaceful means to proclaim their grievances, the authorities consider their activities to be unlawful and they are persecuted in various ways. d/ Information available to the Special Rapporteur indicates that there are more than 100 such groups throughout the country. As a result of severe pressure exerted on them and their families by the State apparatus, their membership has declined and the scope of their action is limited. Moreover, this restraint, in conjunction with the current severe economic crisis, is forcing many members to leave the country by legal or illegal means.

7. The penal terminology most frequently used to label the activities of such persons as crimes include, inter alia, enemy propaganda, contempt, unlawful association, possession of illegal printed matters and resistance. The Special Rapporteur also has received information to the effect that persons arrested on ideological grounds have been accused of economic crimes such as possessing items acquired on the black market; however, the economic situation in the country is such that at some point nearly the entire population feels compelled to turn to the black market for basic necessities, a fact known to the authorities. e/ One example of this practice is the case of Elizardo Sánchez Santacruz, the President of the Cuban Commission for Human Rights and National Reconciliation, who was sentenced in July 1994 to six months of house arrest because he allegedly possessed a supply of fuel exceeding the legal limit.

8. As far as the Special Rapporteur has been able to ascertain, the authorities do not provide figures on the number of persons serving sentences for politically related crimes. However, three non-governmental groups concerned with protecting human rights in Cuba provided the Special Rapporteur with partial lists of their own, containing 627, 918 and 962 names, respectively. With a few exceptions, these lists do not include the names of persons sentenced for antisocial behaviour or because they attempted to leave the country illegally. The authorities also have continued the practice of releasing some of these persons before they have served their full time. These are persons on whose behalf foreign Governments or institutions interceded as

mediators with the Cuban Government and offered to meet the requirement that they leave the country. Some of these persons rejected the offer and are still in prison.

9. The following persons are among those prosecuted in 1993 or 1994:

(a) Jose Angel Carrasco Velar was sentenced in January 1993 to seven years in prison for the crime of enemy propaganda because he helped to prepare newsletters critical of the country's leaders and made critical remarks to foreign journalists.

(b) Juan Carlos Castillo Pasto was arrested in Santiago de Cuba early in 1993 and accused of enemy propaganda for hanging posters and writing anti-government slogans on walls. He was subsequently sentenced to 10 years in prison by the State security offences division of the Santiago de Cuba People's Provincial Court.

(c) Guillermo Fernández Donate, a member of the Socialist Democratic Movement and of the Cuban Committee for Human Rights, was arrested in June 1993 and later sentenced to four years in prison on grounds of spreading enemy propaganda. Early in 1993 he and his wife reportedly were dismissed from their jobs. f/

(d) Augustín Jesús Lastre Barroso was sentenced to nine years' imprisonment for the crime of enemy propaganda in a trial held on 24 September 1993 in the State security offences division of the People's Provincial Court of Camagüey. Specifically, he was accused of reporting human rights violations by telephone and in radio broadcasts to the outside world.

(e) Roberto Rodríguez Hernández was arrested at Holguín in 1993 for painting anti-government slogans on a wall and was moved to police headquarters where he reportedly was beaten. He was subsequently sentenced to four years' imprisonment for disseminating enemy propaganda.

(f) Three human rights activists from Isla de Pinos were sentenced early in 1994 to prison terms for allegedly disseminating enemy propaganda: Antonio Morales Zoa and Eriberto Acevedo Vázquez received three-year terms and Nidia Ramírez Alvarez (the wife of Mr. Morales Zoa), received a term of one and one-half years.

(g) Rodolfo González González, a member of the Cuban Committee for Human Rights, was arrested on 10 December 1992 for furnishing anti-government information to the foreign media. In March 1994 he was sentenced to seven years in prison on the charge of spreading enemy propaganda. He is serving his sentence in the Guanajay prison in Havana Province. It was reported that the authorities offered to stay his sentence if he would leave the country but that he refused. According to the information received, during three months of detention at Villa Marista before he was moved to prison, he was kept in a sealed cell and had to sleep on a metal sheet under a fluorescent light that burned 24 hours a day.

(h) Ruben de Jésus Aloma Aday, aged 20, was sentenced to one year in prison in June 1994 for shouting slogans against the regime and slandering and insulting its leaders at a demonstration protesting the death of a youth, Luis Quevedo Remolina, in the municipality of Regla on 14 October 1993. g/ Aramís Hurtado and Joel Sierra were sentenced to one year in prison and Jesús Barthelemí Suárez and Felipe Fernández, to one and one-half years, in connection with the same events.

(i) Domiciano Torres Roca, h/ a former professor of architecture who was expelled from his department in 1992, and Vice-President of the Democratic Civic Party, was arrested on 13 August 1993 for making an anti-government poster. On 12 July 1994 he was tried on the charge of spreading enemy propaganda, for which the prosecutor sought a four-year prison sentence.

10. The Special Rapporteur also was told about the following cases involving persons who, as this report went to press, were being held in custody pending trial:

(a) Raúl Dimas González Cuellar, Vice-President of the Pacifist Solidarity and Peace Movement, was arrested in Havana on 26 January 1994. He was held for questioning in the Villa Marista security police station until 14 March when he was moved to the Guanajay prison, accused of carrying weapons and being in possession of explosives. However, the reports by the security agents who searched his house made no mention of weapons or explosives.

(b) Francisco Chaviano González, President of the National Council for Civil Rights in Cuba, was detained by agents of Havana State Security Police on 7 May 1994. The agents entered his home shortly after an unknown person gave him documents detailing human rights violations. The agents also seized National Council documents, including information on persons who had disappeared at sea while attempting to leave the country. He was brought to the Villa Marista police headquarters where he was accused of divulging secret information about State security. Mr. Chaviano previously had repeatedly been subjected to intimidation.

11. The Special Rapporteur continued to receive information concerning incidents involving persons subjected to harassment, "acts of repudiation" on the part of so-called "rapid response brigades", temporary detention, loss of employment or other reprisals by the security apparatus, and for ideological reasons. In 1994, such incidents included the public protest in Havana on 5 August which, according to the information received, led to some 300 arrests.

12. In early September the initial trials of persons arrested in the disturbances of 5 August were held at San Miguel de Padrón. At one of those trials, 11 persons, mostly youths between 18 and 25 years old, were accused of "creating a public disturbance". Four of them were sentenced to one year in prison, two, to eight months and two, to six months, while three were acquitted. The court presumably established that the accused had been proven guilty of participating in the aforementioned disturbances, during which a large group of persons began shouting insulting epithets directed at various government leaders. Furthermore, the court based its guilty verdict on the fact that the

accused had been arrested where the events had occurred but had no reason to be there, and on who they were, i.e., mostly young social misfits. i/

13. A number of persons belonging to human rights groups reportedly were arrested during the days following the disturbances even though they had not participated in the protest. They included, for example, Gustavo Cano Escobar, President of the Cuban Democratic Movement; Nelson Torres Pulido, President of the Cuban Human Rights Party; María Valdés Rosado, President, and Jesús Rafael Castillo Hernández, Vice-President, of the Cuban Christian Democratic Movement; Aida Rosa Jiménez, President of the Democratic Civic Party, who was also detained for two days in July; Alberto Rodríguez García, Jesús Faisel Iglesias and René Gomez Manzano of the National Council for Civil Rights in Cuba; René del Pozo Pozo and Gerardo Valdés of the Coordinating Body for Human Rights Organizations in Cuba; Sara Franco Lemón of the Confederation of Democratic Workers; and Fernando Velázquez Medina, who recently was released after spending two years in prison because he and his wife, Xiomara González, had ties to the group known as the Alternative Way.

14. Other examples of persons recently subjected to harassment follow:

(a) Jesús Yanes Pelletier, 77 years of age, Vice-President of the Cuban Committee for Human Rights, was assaulted in the street on 7 August 1994 by persons suspected of acting at the instigation of the security forces. On 16 June 1994 he had been arrested, taken to the police station on Calle L and the Malecón and threatened; on 21 June, he was again arrested and taken to Villa Marista for interrogation.

(b) Angela Herrera, President of the Cuban Democratic Coalition, and her daughter, Guillermina de la Caridad Acuña Herrera, member of the Movimiento Maceista por la Dignidad (Torch-bearers for Dignity) in Havana, were the targets of repeated threats, harassment, house searches and brief detentions for the activities in publicizing Cuban human rights violations in foreign countries. In the course of 1994, Mrs. Herrera left the country.

(c) Belkis Lima Pérez and Eduardo Lima Pérez, members of the Cuban Civic Movement, were subjected to an "act of repudiation" by "rapid-response brigades" in their home in the Alamar neighbourhood of Havana on 12 April 1994, in the course of which a family member was wounded.

(d) Jorge Omar Lorenzo Pimienta, Mario Rodríguez Castellón, Abilio Ramos Moya and Terina Fernández González, members of the National Council for Civil Rights in Cuba, had their homes searched by the police in early May 1994, in connection with the arrest of the Council President (Francisco Chaviano González). The police also confiscated documents belonging to the Council; and Mr. Lorenzo Pimienta was again detained for several days in early August 1994.

(e) Ignacio Hidalgo Gómez, a delegate from Holguín to the Cuban Committee for Human Rights, was arrested on 14 August 1993 and taken to the State Security Department, where he remained for several hours during which he was forced to sign a record of warning. On 10 December 1993, he was again arrested and held more than 12 hours on the premises of the Ministry of the Interior. On

10 March 1994, he was taken to the third police precinct where he was held for 11 hours; in addition, on 21 April 1994, he was threatened by the head of the police sector and the chairman of his neighbourhood Committee for the Defence of the Revolution, who came to see him in his home.

(f) Eugenio Rodríguez Chaple, President of the Democratic Civic Front, his wife Lázara Herrera Portelles and his two sons were subjected on 12 February 1994 to an "act of repudiation" by a group of about 30 people who broke into their home in Havana, beat them and damaged their property. The attack lasted about half an hour, without the police putting in an appearance. When later Mr. Chaple went to the police station to complain, the police retorted in hostile tones that this kind of incident did not occur in Cuba and it was therefore impossible for them to bring charges. i/

(g) Marta María Vega Cabrera, a member of the Democratic Civic Party in Isla de Pinos, was arrested several times; on 3 June 1994, in particular, after her home was searched and the family's belongings damaged, she was brought to Security Police headquarters in Nueva Gerona, and held there for several weeks.

15. In his report to the fiftieth session of the Commission on Human Rights, the Special Rapporteur referred to cases similar to those mentioned above and the practices that can be deduced from them, and to the excessive control being exerted for ideological reasons over the day-to-day life of every individual through the learning centres for example, or the workplace, down to the neighbourhoods, with their Committees for the Defence of the Revolution. In the workplace, for instance, "reliability" is a key factor in judging the "fitness" of each worker, and reliability covers political orientation, as well as loyalty to management at the workplace and to the Government, or the Party, and willingness to perform the services they require. Investigations, the results of which are confirmed by the Committees for the Defence of the Revolution or the Department of Technical Investigations or the opinions of the Party cell in each workplace, are decisive in assessing reliability. If it is decided that a worker is not trustworthy, he is dismissed from his job, post, company, etc., without regard for experience, years of service or any other qualifications. Furthermore, a ruling of unreliability cannot be appealed to the labour tribunals.

16. Of relevance in this connection are the comments of the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization, which considered the question of discrimination in the fields of labour and education in connection with Convention No. 111 concerning Discrimination in respect of Employment and Occupation, ratified by Cuba in 1965. The subject was considered in response to a charge that 14 university professors had been dismissed in January 1992. k/ In its 1994 report, the Committee states:

> "Resolution No. 590 of 4 December 1986, which adopts and gives effect to the rules of procedure for the inspection system of the Ministry of Education, establishes that the results, goals and methods of inspection must always be considered from the viewpoint of the Communist Party of Cuba (art. 2) and evaluated in the light of political, ideological and scientific factors (art. 8). The Committee felt that such criteria could

give rise to discrimination based on political opinion: (i) in the education of students; (ii) in the evaluation of teachers whose performance was under review and (iii) in the conditions of employment and evaluation of the work of the inspectors themselves.

"Moreover, Decree-Law No. 34 of 12 March 1980 is based on the idea that 'persons involved in the process of educating children and young people constitute a model for the development of the communist personality'; in pursuance of the law, it is justified to dismiss from their posts members of the faculty of schools and institutions of higher learning, as well as the staff of educational institutions dealing directly with students, on grounds, inter alia, of 'committing serious and egregious acts contrary to socialist morality and the ideological principles of our society'. This law has been applied to technical personnel, professors, teachers, administrative or service personnel and technical personnel in the education field ... In previous commentaries, the Committee took note of the Government's intention to amend those texts and in its last report it takes note of the Government's intention to do so when appropriate and to make the adjustments required by the particular circumstances of each sector of the system ...

"The Committee also examined resolution No. 2 of 20 December 1989 on the reinstatement of teaching personnel to whom Decree-Law No. 34/80 was applied. The Committee notes that workers dismissed from their posts for any of the activities listed in Decree-Law No. 34/80 cannot be reinstated until they have completed five years of disciplinary work, during which period they are to be barred from engaging in educational activities.

"The Committee believes that the legislation in question is worded in such broad terms as to give rise to discriminatory practices against any worker involved in the education of young people, and that the penalties stipulated exclude them from their posts for too long a period ... The Committee requests the Government to take the necessary steps to abrogate those legislative texts in the near future in accordance with article 3 (c) of the Convention." 1/

17. Despite the recommendations of the Committee of Experts, the practice of dismissal from the workplace, especially of professors, seems to have continued, as can be seen in the following cases:

(a) Antonio Domínguez Dizat, a researcher at the Advanced Agricultural Institute in Ciego de Avila, was dismissed from his post on 3 August 1993 on grounds of political unreliability, for having expressed opinions in favour of political change and for continuing his friendship with two university professors who had also been dismissed from their posts for the same reasons in 1992.

(b) Marta Vidaurreta Lima, a professor at the Advanced Industrial Design Institute in Havana, was dismissed from her post in February 1994 pursuant to Decree-Law No. 34/80, after having delivered a letter to the Rector of the Institute expressing her opinions about the situation in the country and its impact on higher education, and especially about the application of ideological

criteria when establishing the conditions for admission to the Institute, about the dismissal of professors and about the constant pressure exerted on students, again for ideological reasons.

B. Freedom to form and join trade unions

18. Since the publication of his previous report, the Special Rapporteur did not find any change for the better with regard to recognition of trade union rights. In general, there are serious restrictions on the right of workers to establish organizations that will promote and defend their interests and to have them recognized as legal persons and to be protected against discrimination aimed at undermining the freedom to form and join trade unions provided for in International Labour Organization (ILO) Conventions Nos. 87 and 98. Despite repeated criticism by the bodies responsible for the implementation of ILO conventions, the Confederation of Cuban Workers continues to exercise a monopoly in that respect. As a result, the Special Rapporteur continued to receive information indicating that new trade unions, considered illegal by the authorities, were being established, with membership growing but that their members were being harassed.

19. Complaints were brought, for instance, in cases like that of Edith Lupe, a member of the Confederation of Democratic Workers in the Arroyo Naranjo district of Havana, who was summoned on 24 May 1994 by the State Security Department, where she was threatened with prosecution and with an "act of repudiation" if she continued her trade union activities. The same type of threats were made in the course of 1994 against Héctor Domínguez, Jesús Benito Díaz, Fernando Mendoza, Martha Rosa Medina and Manuel Gallardo, also members of the Confederation in the San José de las Lajas district; Sara Franco Lemón and Rigoberto Correa Rodríguez, members of the executive board of the Confederation in Havana; and Ileana Estrugo Pomares and Lázaro Rodríguez Torres, both members of the Love and Peace Christian Movement, also in Havana. Lázaro Corp Yeras, General Secretary of the General Union of Cuban Workers and President of the National Commission of Independent Trade Unions was beaten in the street in the Playa district of Havana on 2 August 1994 by three individuals suspected of connections with security bodies; his 17-year-old son was also beaten in the same incident.

20. In addition, Juan Guarino Martínez Guillén, President of the Confederation of Democratic Workers, was arrested early in May 1993 charged with incitement to crime as the organizer, according to police, of a peaceful demonstration that took place on 1 May. He was sentenced to one year of house arrest, with the sentence to be doubled and served in prison should he insist on pursuing his trade union activities. On 17 September 1993, he was again arrested and taken to the Taco-Taco prison in Pinar del Río, where in January 1994 he was allegedly beaten and then transferred to the Combinado del Este prison. He was released in May 1994, apparently because of serious health problems.

C. The "dangerous state" and security measures

21. As noted in earlier reports, article 72 of the Penal Code deals with the concept of the "dangerous state", which it defines as "a person's special proclivity to commit offences as demonstrated by conduct that is manifestly contrary to the norms of socialist morality". Article 74 provides that "'a dangerous state' exists when the subject displays any of the following indicators of 'dangerousness': (a) habitual inebriation and dipsomania; (b) drug addiction; (c) antisocial behaviour". Furthermore, "any person who, through antisocial behaviour, habitually transgresses the norms of social coexistence by committing acts of violence, or other acts of provocation, or who violates the rights of others, or whose general behaviour imperils the rules of coexistence or disturbs the order of the community, or who lives as a social parasite off the work of others or exploits or practices socially reprehensible vices, shall be considered to be in a dangerous state".

22. In addition, article 75 provides that "anyone who, while not falling under any of the dangerous states referred to in article 73, might develop a proclivity to commit offences, because of connections or relations with persons who are potentially dangerous to society, other persons, or the social, economic and political order of the socialist State, shall be given a warning by the competent police authorities to avert involvement in socially dangerous or criminal activities".

23. When a person displays any of the indicators of "dangerousness" referred to above, so-called security measures may be applied before or after a crime is committed. In the case of pre-crime measures, article 78 et seq. provide that anyone found to be in a "dangerous state" may be subject in the ensuing proceedings to security measures involving therapy, re-education or surveillance by the National Revolutionary Police. Re-education measures are applied to antisocial individuals and consist of internment in a specialized labour or study institution and delivery to a labour collective for monitoring and modification of their behaviour. Surveillance by organs of the National Revolutionary Police, also applicable to antisocial individuals, involves modification and monitoring of the conduct of the subject in a "dangerous state" by their officials.

24. According to information received by the Special Rapporteur, Decree-Law No. 128 of 1991 establishes the procedure to be followed in the case of a finding of a pre-crime indicator of "dangerousness" involving antisocial behaviour and further provides that such an indicator shall be determined summarily. The National Revolutionary Police opens the case file with the report of the reporting officer, the testimony of persons in the neighbourhood of the domicile attesting to the "dangerous" conduct of the suspect, and any official warnings delivered. Once the file is completed the police submit it to the judge of the district court, who decides whether to refer it to the People's Municipal Court which has to decide within two working days of the date of receipt whether it contains an indicator of "dangerousness". Within those two days the Court may authorize further inquiries or formalities, which the judge will be requested to complete within five working days. When the Court reviews the complete file it will set the date of arraignment. The Court will issue its decision within 24 hours of the arraignment.

25. The reports received by the Special Rapporteur indicate that during 1994 and the final months of 1993 the authorities frequently opened files on cases of "dangerousness" which subsequently led to incarceration of the persons in question in penal establishments for periods of up to four years (the Penal Code makes no specific mention of imprisonment as a possible security measure). The summary nature of the proceedings suggests, according to reports received, that the accused has scarcely any time to contact a lawyer of his choice or to prepare a defence. The increase in such cases over the reporting period might be due to an increase in acts of vandalism or social protest such as the distribution of pamphlets or the painting of anti-Government slogans on walls, not having an acceptable job, petty larceny, throwing stones at commercial establishments, etc. In many cases groups of persons, not individuals, are arrested and subsequently tried, thus further reducing procedural safeguards.

26. The information received indicates that this legislation is used not only to control common crime, which may have increased owing to the economic crisis, but also against persons suspected of activities that contravene the official ideology. The criterion of "special proclivity" to commit offences is a subjective standard that frequently leads to the adoption of measures involving restrictions on the freedom of persons whose only proclivity is to hold views that differ from the official line.

27. In the final analysis the very existence of a penal offence that means that a person may be punished without having committed any crime, the imprecision of the terms used in the Penal Code to describe the offence and the consequent security measures, the summary nature of the procedure and the lack of safeguards it implies, as well as its use on the basis of political criteria, certainly give cause for concern from a human rights perspective.

28. The following are some of the individual cases reported to the Special Rapporteur:

(a) Héctor Eduardo Pedrera Miranda was arrested on 16 December 1993 on leaving his home in Alta Habana and taken to the district office of the National Revolutionary Police. On 23 September he was brought to trial, during which the prosecutor stated that he had a police record because he left the country illegally (an offence for which he had already served time), thus demonstrating that he was hostile to the Revolution and "dangerous". It was also reported that defence counsel had no access to the accused's file and that he was allowed to speak with the accused only minutes before the trial. The accused was sentenced to four years' imprisonment.

(b) Mercedes Parada Antunes, a member of the Association for the Defence of Political Rights, was arrested on 26 September 1993, accused of "dangerousness". On 8 October 1993 a trial was held at the People's Municipal Court at Marianao, Havana, at which she was sentenced to two years' imprisonment.

(c) Benigno Torralba Sánchez, General Secretary of the Confederation of Democratic Workers in Arroyo Naranjo, Havana, was arrested at the end of 1993 and subsequently sentenced to four years' imprisonment for "dangerousness". He served the sentence in the Combinado del Este prison.

(d) Abel Jesús Acosta Ameneiro, a member of the Human Rights Party in Villa Clara, was arrested on 4 October 1993. At the trial, held on 6 October, he was sentenced to two years' imprisonment for "dangerousness" and taken to La Pendiente prison in Villa Clara. At the trial it was stated that the accused had met with "counterrevolutionary elements", possibly a reference to a meeting he had with a Canadian journalist.

(e) Rolando Cambra González, of the Cuban Human Rights Party, was arrested on 15 October 1993 in Havana and sentenced to four years' imprisonment for "dangerousness".

(f) Jorge Luis Dominguez Riera, of the Cuban Human Rights Party, in Regla, was arrested on 15 October 1993 and taken to the Department of Technical Investigations in Havana for having participated in an anti-government demonstration. On 18 October he was sentenced to four years' imprisonment for "dangerousness".

D. Freedom of the press

29. Just as freedom of expression and freedom of association are sharply limited for ideological reasons and subject to strict control by the state machinery, the press suffers from similar restrictions. Article 53 of the Constitution recognizes freedom of speech and of the press, provided it is in keeping with the objectives of socialist society. The same article states that "material conditions for the exercise of that right are provided by the fact that the press, radio, television, movies and other organs of the mass media are State or social property and can never be private property; this ensures their use at the exclusive service of the working people and in the interest of society".

30. As a result of this system, the major newspapers, such as Granma (the official organ of the Communist Party), Juventud Rebelde (the organ of the Union of Communist Youth) and Trabajadores (the organ of the Cuban Workers Confederation) reflect only the government viewpoint; they report only to a limited extent the discussions held in the high-level organs of government with power to decide issues of major interest to the citizens; and they emphasize the positive aspects of the news over the negative. It is obvious that this situation makes for poorly informed citizens and induces apathy towards the national communication media, while increasing interest in turning to foreign media to find out what is really happening in their own country. It is estimated that some 70 per cent of the population regularly listens to Radio Martí, a programme broadcast from the United States.

E. Right to leave and return to the country

31. The right to leave one's own country and return to it is not recognized in Cuban law, as previous reports have explained. This right is set forth in the Universal Declaration of Human Rights m/ and in other international human rights instruments, but they do not, however, recognize the right to enter any specific country.

32. According to national legislation, in order to enter or to leave the country Cuban citizens require a permit, which government authorities may issue or not at their discretion. While in recent years the requirements for obtaining an exit permit, whether temporary or permanent, have been simplified, the authorities may deny one at any time at their discretion, and their decision is not subject to appeal through the courts. The Special Rapporteur received information in 1994, for example, about the cases of Raúl and Alejandro Roque González, former pilots in the Cuban Air Force, who served terms in prison for political reasons and were denied authorization to leave the country, although they had entry permits for the United States, where some members of their family reside. Others in a similar situation were Nancy Alemeida Fernández and her two sons, Jorge De Jesús and Luis Fidel Blardoni, who held entry visas for the United States, where they intended to rejoin their husband and father, a former captain in the Merchant Marine, who obtained asylum there in 1992. Then there is the case of Gregorio Sáez Alvarez, once a political prisoner: he and his family had their exit permit suspended without explanation after they had completed all the formalities, even to the point of surrendering their ration book and having their girls withdraw from school, as required.

33. For chiefly political reasons, but also, especially in recent years, for economic reasons, a large portion of the Cuban population has manifested a desire to leave their country to live elsewhere, preferably in the United States. Faced with this situation, in 1984 the two Governments concluded agreements on immigration, according to which the United States would issue a certain number of visas to Cubans annually to permit them to reside in that country. On the other hand, under United States Public Law No. 89-732 of 1966, referred to as the "Cuban Adjustment Act," the United States Government authorized Cubans who had entered the country to take up residence.

34. The difficulties involved in emigrating legally (both Governments have something to say about that) and the loophole opened up by the Cuban Adjustment Act have unleashed a steady stream of people, particularly in recent years, leaving Cuba and heading for the coast of the United States on any boat they can find and at the risk of their lives. Illegal exit, however, is defined as a crime by article 216 of the Cuban Penal Code, which provides that "a person who leaves or commits acts preparatory to leaving the national territory without complying with legal formalities shall be subject to imprisonment for from one to three years or a fine of three hundred to one thousand currency units". As a result, persons caught trying to leave the country illegally or committing acts preparatory to leaving are prosecuted and frequently sentenced to prison terms; they are stigmatized as "unreliable" in the workplace, and the physical means they were using to effect their departure (such as a vehicle for transport) are confiscated.

35. In his previous report, the Special Rapporteur cited estimates from non-governmental sources indicating that some 2,500 persons reached the United States coast in this way in 1992, and some 3,000 in 1993. A press release transmitted by the Permanent Mission of Cuba to the United Nations Office at Geneva dated 25 August 1994, containing a summarized version of the speech given by the President of the Republic on national radio and television, states that in 1990, Cuba blocked the illegal exit of 1,593 persons, while the United States

admitted 467; in 1991, it stopped 6,596 persons, while the United States admitted 1,997; and from January to August 1994, Cuba prevented the exit of 10,975 persons, while the United States admitted 4,092. These figures give an idea both of the increased number of exit attempts and of the number of persons who may have been penalized for it.

36. In this situation, there are two fundamental reasons for concern. One is the large number of people who are perishing at sea, given the conditions under which they attempt the crossing; on this there are no reliable statistics. The other is the attitude of the Cuban authorities when they catch people attempting to leave. A case recently reported involves José Inesio Pedraza Izquierdo, who was killed by frontier guards who opened fire in June 1994 as he attempted to leave the country through the port of La Fe in the municipality of Guane in Pinar del Río province.

37. On 13 July 1994 the tugboat 13 de Marzo was shipwrecked as it headed for the United States coast carrying a large crowd of people including children who were attempting to leave Cuba. According to the above-mentioned press release from the Permanent Mission of Cuba, "in the investigation of the tragic shipwreck of the vessel, from which 31 persons were rescued, while 32 others drowned, it was determined that the authorities of the island bore no responsibility for the accident". However, the Special Rapporteur received testimony from some of the survivors indicating that government launches from the port of Havana tried to stop the 13 de Marzo with pressurized water jets and then deliberately rammed it, causing it to sink. Regrettably, this is no isolated incident. The Special Rapporteur has already made mention in previous reports of information received about incidents of excessive use of force on the part of coastguard patrols to prevent the departure of persons attempting to leave the country, resulting in deaths on a number of occasions. This tends to contradict the argument of the Cuban Government that it seeks to prevent these departures because of the risk to life that they entail, and in the case of the tugboat 13 de Marzo, the response was disproportionate, even given the fact that the boat was stolen.

38. In the weeks following the incident just described, the number of persons attempting to leave the country for the United States increased dramatically, so that early in August the Cuban Government declared that from then on it would not try to prevent such departures. From a human rights standpoint, the decision can only be viewed as a positive step. Nevertheless, it was dictated more by political expediency than humanitarian motives and was not accompanied by a change in the laws to decriminalize illegal exit. This was borne out by the fact that after new immigration agreements were concluded with the United States early in September 1994, the ban on leaving the country reverted to the status that prevailed prior to the crisis - a crisis that led to the exodus of some 30,000 people. It is not the business of the Special Rapporteur to take a position on the phenomenon of departure by sea and the consequences to those who attempt it. It is his responsibility, however, to deplore the excessive use of force on the part of officials charged with preventing such departures and to deplore the prosecution and punishment of those who exercise their internationally recognized right to leave their own country.

III. CONDITIONS IN THE PRISONS

39. The information received by the Special Rapporteur does not indicate any improvement in the food, sanitary and medical conditions, inter alia, described in previous reports of the Special Rapporteur and which continue to give cause for concern. The following is an excerpt from a letter sent recently by a prisoner to the Special Rapporteur: "Over 5,000 prisoners are crowded into Combinado del Este, which has a maximum capacity of about 3,000. Some sleep on the floor and the great majority on thin straw mattresses without sheets or pillowcases. The lack of hygiene, compounded by official laziness and neglect, and of proper products and equipment for general sanitation, adversely affect and constantly endanger the health of prisoners, who appeal in desperation to their relatives for medicine that is not available in the prison medicine chest. Exactly the same conditions prevail in Guanajay prison, which keeps over 700 prisoners in buildings intended for a maximum of 400. In both prisons, which are infested with cockroaches, flies and rats, the prison population is exposed to infectious diseases and defenceless owing to inadequate or non-existent medical facilities. A proportion of the inmates of both prisons are suffering from scabies, tuberculosis and other illnesses. One of the methods used in the distribution of the scarce and very poor food rations is the crushing of whole fish, forcing the prisoners to swallow bones and scales."

40. The cases of Sebastián Arcos Bergnes, held in Ariza prison; Joel Dueñas Martínez, held in Kilo 5, Pinar del Río; Rubén Hoyos Ruiz, held in Alambrada de Manacas prison, Villa Clara; William Pérdomo Santiesteban, held in Ganuza, Havana; Mario Pérez Blanco, held in Ganuza; Pablo Reyes Martínez, held in Quivicán and Alberto Valdés Fernández, held in Nueva Blanca, Havana, are among the communications referred to the Special Rapporteur because those prisoners were denied medical assistance when the seriousness of their condition required it.

41. There seems to have been no improvement either in the treatment of prisoners by prison staff or in the authorities' attitude to the punishment of officials for excessive use of force. A report received by the Special Rapporteur on conditions in the provincial prison of Ciego de Avila contains the following passage: "There are constant and repeated inspections, extreme measures are taken by the prison security officials to ensure that not a single report on what is happening reaches the outside world, the prisoners are strip-searched twice before receiving a visit and they can only see their relatives across a table while a guard keeps watch over their movements. Their relatives are also subjected to humiliating and degrading searches; beatings and canings are a daily routine." The following are some of the incidents reported:
Roberto Abrós, a prisoner in Quivicán, was beaten on 16 August 1993 for going on a hunger strike and sustained a head wound and a broken arm.
Lázaro López Rodríguez, held in Combinado del Este, was severely beaten on 19 September 1993 for refusing to wear an over-sized uniform. Mantel Ruiz Fail, held in the provincial prison of Ciego de Avila, died on 12 March 1994, allegedly as a result of a beating by two guards who chained him to the bars of a cell. Elvis Mantel Suárez Armenteros, held in Combinado del Este, was severely beaten on 4 July 1993 for insisting on medical treatment for a severe earache that he had been suffering for days. Marta María Vega Cabrera and Marta Gil were severely beaten on 14 July 1994 by guards in Prisión Occidental

de Mujeres for writing an anti-Government slogan on the wall and the former was subsequently placed in solitary confinement.

IV. CONSIDERATIONS CONCERNING THE ENJOYMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

42. The Cuban economy has suffered a complete breakdown in the past four years, with disastrous consequences for the well-being of the population. Negative economic growth has been recorded each year since 1990 and the sugar industry, the mainstay of the national economy, is running at 50 per cent of its capacity at the beginning of the decade. Heavily dependent on oil to meet their energy requirements, the greater part of the industrial, agricultural and transportation sectors and indeed everyday life have been paralysed by the sizeable reduction in oil imports. There are prolonged and frequently unpredictable power cuts and particularly severe transportation difficulties, so that in some cases people have to walk or cycle considerable distances to reach their workplace.

43. Although in recent decades the Cuban Government has sought to create conditions in which the majority of the population can enjoy the economic and social rights guaranteed in the Universal Declaration and other human rights instruments, those rights are today in serious jeopardy. Patients may see a doctor or surgeon when necessary but they have great difficulty in obtaining prescribed drugs, even for extremely minor ailments. Students still have access to free education at all levels but the quality and availability of textbooks and school equipment have deteriorated sharply. Many companies have been forced to close down for lack of supplies, creating what amounts to unemployment, although the workers continue to receive a portion of their wages.

44. With regard to food, although the Government theoretically guarantees a minimum to every citizen through the ration book, the commodities available in this way are far from sufficient and sometimes of dubious quality, so that ordinary people have to satisfy their basic needs and those of their families, and not only for food, by going against the law and turning to the parallel market. Although they are for the most part law-abiding citizens, they suddenly find themselves breaking the law, with the attendant individual and social implications.

45. According to data provided by the Cuban authorities to the European Union, per capita daily caloric consumption amounted in 1993 to only 1,780, a drop of 1,065 from 1989 and of 770 even from 1960, compared with an ideal consumption of over 3,000 calories. Between 1989 and 1992, the output of 11 of the 15 main agricultural products fell dramatically: production of poultry declined by 77 per cent and that of pigs by 69 per cent. A similar decline was recorded in the output of processed food: the volume of powdered milk produced stood at only one tenth of its 1989 level. Schools, and not all of them, provide a glass of milk to children only up to the age of eight years now, compared with 16 previously. n/

46. According to analysts of conditions in Cuba, the Government bears a large share of the responsibility for this situation. Official estimates show that

the Cuban economy ceased to grow in the mid-1980s. There were various factors involved but one of them seems to be related, in the case of the food sector, to the so-called correction campaign launched in 1986, which prohibited farmers from selling their produce in the free market and prevented the population from engaging in economic activities that would have helped to meet its basic needs. Other factors to which analysts attribute the Cuban economic situation have been the virtually total absence of small-scale enterprises in the private sector; centralized planning at any price entirely unrelated to market forces; excessively centralized control of decision-making governing the appropriation of resources and lack of a rational economic price structure.

47. The international community also has some responsibility to bear, on the one hand for cutting off the extensive aid flows from the former socialist bloc and, on the other, for the United States decision not only to maintain the embargo imposed in the 1960s but also to prohibit subsidiaries of their companies established in third countries from trading with Cuba. This has raised new obstacles to Cuba's economic relations with other countries and ultimately increases costs, so that the transition to a more open economy becomes more difficult.

48. The Cuban Government has begun to take tentative steps to remedy the situation. For example, some forms of self-employment have been legalized, although the establishment of small businesses that would have to hire workers to enhance productivity is still prohibited. State farms have been converted into what may be described as agricultural cooperatives; however, they are still subject to regulations that prevent them from operating as genuinely independent economic entities. Facilities for foreign investment have reactivated certain sectors of the economy but the uncertainty surrounding the country's political future has led investors to demand unreasonable advantages as a precondition for investment. The Government's recent announcement of the forthcoming creation of an agricultural market open to all those involved in agricultural production, in which prices will be fixed by producers without State intervention, may prove a highly constructive step, provided that the Government does not oppose the necessary activity of intermediaries.

49. To prevent the situation from deteriorating even further, with the resulting erosion of economic and social rights, the Government should allow Cuban citizens to operate freely as economic agents by removing existing barriers to the establishment of small-scale enterprises. It should also recognize the importance and usefulness of certain services for supplying food to urban areas and permit the development of private businesses in all branches of economic activity, the free hiring of labour and, finally, the organization of independent trade unions.

V. CONCLUSIONS AND RECOMMENDATIONS

50. The Special Rapporteur has observed that, throughout 1994, the human rights situation in Cuba has not changed significantly as compared with the previous two years; it has been the subject of reports by the Special Rapporteur to the General Assembly and the Commission on Human Rights and continues to be a matter of concern.

51. The underlying causes are, above all, institutional and of internal origin. On the one hand, the persistence of political repression, while giving rise to tragic situations at the individual and collective levels, impedes the search for solutions to the problems of a society in serious crisis from various points of view. In the economic sphere, the policies carried out for years, in conjunction with more recent phenomena beyond government control, such as the loss of markets and worsening of the terms of trade, have in recent years plunged the country into a state of paralysis and chaos, with the result that the population can no longer be fed adequately, while the level of production and distribution of basic commodities and traditional exports has dropped precipitously. In these circumstances, it is absolutely necessary to put in place fundamental economic reforms so as to avoid a further worsening of the situation. If the present system is maintained without major changes, which is a possibility, the result would, in the best case, be an impoverishment that would nullify and dismantle many, if not all, of the advances which Cuban society has made over the past 35 years. In addition, that would entail a strong risk of social protest and new waves of people trying to leave the country by sea. The measures taken so far with regard to the functioning of the domestic economy aim in the right direction in that they introduce a measure of flexibility and opportunities for private initiative; however, they are still too modest and insufficient.

52. While the economic shortcomings do not necessarily constitute human rights violations, the Special Rapporteur believes that they are an important element in explaining the context in which such violations occur. Furthermore, these deficiencies are an obstacle to any reform aimed at eliminating, or at least mitigating, human rights violations.

53. An orderly programme of economic and political reforms would be greatly facilitated if Cuba's current isolation from neighbouring countries came to an end. The prolonged economic, trade and financial embargoes imposed by the United States have, over the years, had an adverse impact on the country's political climate and economic reality. They are now an obstacle to the necessary opening up of a system shaped and justified to a large extent by a perceived need to withstand external pressures and hostile acts which threaten national sovereignty. The blockade reaffirms the political aims of government sectors which fear any attempt to introduce flexibility into their control over society; more importantly, it discourages Cubans who desire to work for a better future. A feeling of profound resignation is probably the dominant mood among the general population, but there is also fear of alternative policies represented by hard-line, politically influential Cuban-American groups. These fears do not help to foster a resolve to effect changes, whether through protests or a commitment to participate in the building of a different society.

54. The Government of Cuba should institute a serious and fruitful dialogue with all sectors of society, including the internal opposition, without dismissing the opinions of Cubans resident abroad. This dialogue is absolutely essential and should have as its aim facilitating a peaceful transition to a pluralistic society in which all Cubans have a place. In this connection, official initiatives, such as the holding in Havana in April 1994 of the Conference on the Nation and Emigration, in which a large number of Cubans resident abroad participated, are positive, but vastly inadequate. So, too, was

the meeting held in Madrid in September 1994 by Minister for Foreign Affairs Roberto Robaina and representatives of some sectors of the opposition, also resident abroad. However, it is to be hoped that such initiatives will continue and yield results, and that the dialogue begun in September 1994 by the Governments of Cuba and the United States with a view to resolving emigration issues will be continued and extended to other spheres.

55. The Government of Cuba should recognize the right of political parties and non-governmental organizations to function legally in the country. The freedoms of expression, information and assembly and the freedom to demonstrate peacefully should also be recognized, and all prisoners of conscience should be released immediately, thus enabling those who wish to do so to continue living in the country.

56. Moreover, it is also incumbent upon the international community, which has already expressed its rejection of some aspects of the United States embargo through resolutions of the United Nations General Assembly, to provide all possible support for the establishment of a process of peaceful political transition in Cuba, to ensure that adequate humanitarian assistance is provided to the Cuban population in need, and to facilitate multi- and bilateral technical and financial cooperation with Cuba which can enable its Government and people on a consensual basis to undertake the political and economic reforms which are urgently called for by the current situation.

57. Of course, the international community should also continue to monitor the development of the human rights situation in Cuba since, to the extent that that situation improves, the unambiguous political will of the Government to advance significantly along the path of reform will be demonstrated. In this connection, the Government should cooperate with all mechanisms of the Commission on Human Rights, including the Special Rapporteur, in particular, by giving him the opportunity to visit the country.

58. The Special Rapporteur also deems it necessary to emphasize once again the following specific recommendations, including some of a legal and technical nature, the basic elements of which have already been formulated in previous reports:

(a) Ratify the principal human rights instruments to which Cuba is not a party, in particular, the International Covenant on Civil and Political Rights o/ with its Optional Protocols and the International Covenant on Economic, Social and Cultural Rights;

(b) Cease persecuting and punishing citizens for reasons relating to the freedom of peaceful expression and association;

(c) Repeal all those legal provisions which imply discrimination between citizens on political grounds, in particular in the employment and education sectors, and redress as far as possible abuses committed in this area in the past, for example, by reinstating in their former posts persons who have been dismissed;

(d) Permit legalization of independent groups, especially those seeking to carry out human rights or trade union activities, and allow them to act within the law, but as independent entities;

(e) Review in depth the legal provisions relating to the concept of the "dangerous state" and the relevant security measures with a view to eliminating at least all those aspects liable to infringe individual rights and freedoms;

(f) Ensure greater respect for the guarantees of due process in accordance with the provisions of the relevant international instruments, adopting in particular the measures necessary to facilitate effective access to legal assistance for all persons put on trial without any type of discrimination;

(g) Release all those persons serving sentences for offences against State security and other related offences and for trying to leave the country unlawfully;

(h) Ensure greater transparency and guarantees in the prison system, so as to prevent excessive violence and physical and psychological suffering from being inflicted on prisoners. In this connection, it would be a major achievement to renew the agreement with the International Committee of the Red Cross and to allow independent national groups access to prisons;

(i) Allow international non-governmental human rights organizations to enter the country so that they can evaluate the human rights situation and offer their competence and cooperation with a view to securing improvements;

(j) Repeal the legal provisions which bar Cuban citizens, or persons of Cuban origin resident abroad, from entering and leaving the country freely, while ensuring due respect for minimal administrative requirements.

Notes

a/ See Official Records of the Economic and Social Council, 1994, Supplement No. 4 (E/1994/24), chap. II, sect. A.

b/ Ibid., 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A.

c/ E/CN.4/1994/51, paras. 9 to 15.

d/ Throughout this report the names of some of these groups and their officers have been given as transmitted to the Special Rapporteur by non-governmental sources.

e/ See chap. IV above.

f/ E/CN.4/1994/51, para. 32.

g/ Ibid., para. 40.

h/ Ibid., para. 28.

i/ El País, 24 September 1994.

j/ Other attacks against this family are mentioned in document E/CN.4/1994/51, para. 26.

k/ E/CN.4/1993/39, para. 54.

l/ International Labour Conference, 81st session, 1994, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva, 1994), para. 4.

m/ Resolution 217 A (III).

n/ "Cuba pide auxilio a Europa para evitar el colapso sanitario", El País, 1 May 1994, pp. 10 and 11.

o/ Resolution 2200 A (XXI), annex.